IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1567 of 1984

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MESSRS CHHABILDAS KANJIBHAI A REG. PARTNERSHIP FIRM

Versus

DECD.SHAH TRAMBAKBHAI THAKERSHTHRO L.R. SMT SAVITABEN T SHAH

Appearance:

1. Civil Revision Application No. 1567 of 1984
   M/s. Thakkar Associates for Petitioner No. 1
   Mr Ashish M Dagli for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 18/08/2004

ORAL JUDGEMENT

The petitioner herein, has preferred this

revision application under section 115 of the Code of Civil Procedure, 1908 in order to challenge an order dated 29.9.1984 recorded by the learned District Judge, Surendranagar in Civil Misc.Application No.145/84 dismissing the said application of the present petitioner for condoning the delay, under section 5 of the Limitation Act, 1963, caused in filing Regular Civil Suit against the judgment and decree of the learned Joint Civil Judge (J.D.) at Surendranagar.

2. Feeling aggrieved by the judgment and decree of the trial court, the petitioner preferred the aforesaid civil appeal before the aforesaid court under Section 96 of the Code of Civil Procedure, read with section 29 of the Bombay Act, 1947. The petitioner was late by 53 days in approaching the District Court. Therefore, the petitioner preferred an application under section 5 of the Limitation Act, 1963 for condoning the said delay. After hearing, the learned District Judge found that the delay was not satisfactorily explained and, therefore, the District Judge was pleased to dismiss the said application of the petitioner. Hence this revision.

3. Learned Advocate for the petitioner has contended here that there was good and sufficient reason for condoning the delay for the court below and therefore, the learned District Judge should have objectively considered the said aspect and should have condoned the delay caused in filing the said appeal.

4. On receiving the revision, rule was issued and in response to the service of notice of rule, Mr Ashish M Dagli, learned Advocate appears on behalf of the respondent. I have heard the learned Advocates for the parties and have perused the papers. On going through the application of the petitioner filed before the learned District Judge, it can be gathered therefrom that the judgment and decree were dated 1.3.1984. Certified copies were applied for late. It has also been contended that respondent no.3 therein was dealing with the matter on behalf of all the respondents and common Advocate was engaged by all of them. That thereafter, the said respondent and the Advocate both did not convey anything to the present petitioner and, therefore, the present petitioner did not know about the disposal of the suit and, therefore, there was delay in filing the said appeal.

5. Same facts have been reiterated here also. The petitioner's revision application is supported by an affidavit of the petitioner wherein the aforesaid facts

have been reiterated.

6. When the petitioner clearly states that the fact of disposal of the suit was not brought to the notice of the petitioner, he, naturally, could not prefer appeal within the time stipulated by law. It therefore, can be said that the petitioner was prevented from filing the appeal within the stipulated time of limitation on account of good and sufficient grounds. This shows that the delay has been satisfactorily explained and hence the delay caused in filing the appeal can be condoned. At the same time, considering the length of delay and considering the fact that an old matter of 1984 will be revived after a lapse of nearly 20 years, it would be appropriate to direct the petitioner to pay some costs to the respondents.

7. For the foregoing reasons, this CRA is allowed. The order of the learned District Judge dated 29.9.1984 passed in Civil Misc.Application No.145/84 is set aside and the said application of the petitioner is hereby allowed. The delay caused in filing Regular Civil Appeal is ordered to be condoned. Memo of appeal filed with the said application shall be examined by the Clerk of the Court-cum-Registrar of District Court, Surendranagar properly and if in order, it shall be registered as Regular Civil Appeal and the District Court will naturally deal with and decide the same on merit in accordance with law.

8. Looking to the fact that the suit has been disposed of 20 years back, the District Court, Surendranagar will hear and dispose of the said appeal, after its registration, as early as possible on due priority. The petitioner shall pay costs of Rs.1000/- to the respondent and shall bear his own costs in this application.

Rule is made absolute. R & P appear to have been called for hearing. Office shall immediately transmit the same to the District Court, Surendranagar.

[D P Buch, J.]

msp